

Brownlow Sherard, Esq; and Dame Mary
Anderson his Wife, Appell^{ts}

Simon Harcourt, Esq; Resp^{de}

The Appellants C A S E.

25 July, 1699.

Sir Richard Anderson, by Will (all writ with his own Hand) devised all his real Estate to the said Dame Mary (his Relict) for Life, and gave her all his personal Estate and Power to commit Waste in felling of Woods, without being accountable, and made her sole Executrix, directing her to sell the Inheritance of any of his Lands to raise Money for Payment of his Debts. Soon after Sir Richard's Death, the Respondent pretended to have a voluntary Settlement, dated in March 1694, and that the real Estate was thereby limited to himself for Life, with Remainders to Henry and Richard, his two Sons successively for Life, and to their first and other Sons in Tayle, and to give Colour thereto, he got an Advertisement printed in the New's Paper, intimating That his House and Study were broke open, and his Deeds cut in Pieces, and taken away, only some Scraps of them left; and a Reward was offered for Discovery of the pretended Offenders; and he has there insinuated, that such Deeds were enrolled in the King's Bench.

Upon Searches it appeared there was no Enrollment duly made, but the Respondent being then, and yet a Clerk in the Crown-Office, had with his own Hand transcribed upon two Rolls of Parchment the pretended Deeds aforesaid, with a Memorandum, expressing the same to have been acknowledged in Court, and got such Rolls filed amongst the Rolls of the Crown Office, five Years after the time of the pretended Acknowledgment; which he effected by affirming to the Officer, That the Mark which was to warrant the Enrolment, was writ by a third Person, which Affirmation did afterwards, upon an Examination in the King's Bench, appear to be untrue: The Respondent confessing in open Court, that such Mark was made by his own Hand.

— This ill Practice being thus laid open, the Lady was ready to move against Harcourt, and for vacating the pretended Enrolment. To prevent which, the Respondent unknown to the Lady, made Application to Mr. Methuen her Father, who thereupon informed her, that the Respondent would refer all Matters to him, and that she was to do the like, and sent her in a Letter a Submission (ready drawn) to execute and return to him; which she did, not doubting but she might safely confide in so sure a Referee: But before the Parties were heard to the Matters, or any Witnesses examined on either side, her Father sent for her to see him make his Award; and when she attended, she found him filling up Blanks in a Paper, which he presently after executed as his Award: And the Matter was so contrived, that the Lady was at the same time to sign a Receipt upon the said Award, for part of the Monies awarded, which was brought ready to be paid to her for that purpose, and from thence she was immediately carry'd to Doctors Commons, to renounce her Executrix; altho' she neither then read the Award, or heard it read, or ever before saw it, or any Draught or Copy, or was informed of its Contents.

In April 1700, the Referee sent her an Answer (ready engrossed) to a Bill of the Respondent's, with verbal Directions to put in the same that Day by Noon, which she did; being made to believe, That she could not be safe without a Decree, and that 'twas a proper Answer in order thereto: And all this while she intirely relied upon her Father's doing of her Right, and did not till a Year after that time see the Bill to which the said Answer referred, or had any Draught, Copy, or Abstract of it, nor ever saw the Draught of the said Answer; nor could she obtain a Copy of the Award, till three Months after the said Answer was put in.

The Appellants in April, 1701 (and not before) were told that a Decree was made against them, and upon Search, did find that Harcourt's Bill reighted and tended to establish the Award, whereby nothing was awarded to the Lady, save her Joynture-Lands during Life (being Lands of about 300 l. per Annum, and settled on her by Sir Richard after his Marriage, and before his Will) and her own Jewels of 900 l. Value, and 1350 l. in Money, and she to convey to Harcourt his Heirs, &c. all her Title to the rest of the real and personal Estate: And in her said Answer there is no Recital of the Award; but 'tis expressed, that she admitted such to be made as the Bill set forth, and was willing to perform it, so as she might be indemnified by Decree, and might enjoy her Joynture-Lands, and be well secured against Harcourt's Children, and Sir Richard's Creditors. And it also then appeared, that the Respondent obtained a Decree at the Rolls as upon a Hearing on Bill and Answer for Confirmation of the said Award; and that the Appellants should convey to Harcourt according thereto, he giving Security for their Indemnity against Sir Richard's Debts.

The Appellants had no Notice of the said Hearing, nor employed any Counsel or Agent to appear or act for them, and therefore the Master reported the said Decree to be irregular; But upon Hearing of the Respondent's Examination, such Report was discharged, in regard it appeared that one Mr. Filmer had taken upon him to act as their Counsel in opening the Answer; and in Truth he was procured so to do by the Respondent, (his most intimate Acquaintance) and at his Charge.

Note, At this Hearing, another Irregularity was discovered, viz. That neither the Bill or Answer was filed till after the said Decree.

The Appellants not being proper to complain as to the Answer, whilst the Order of May 1700, stood in their Way, did procure a Rehearing of the Cause, and had Leave to move at the same time to have the said Answer amended: But on Hearing their Petition in that behalf, the Court discharged the same, so that the Appellants could not make their Defence in the Premises, for want of Liberty to put the Truth of their Case in Issue by a proper Answer. — Then the Court proceeded to rehear the Cause upon Bill and Answer (as they then stood) but made no material Alteration of the former Decree of May 1700, Save that the Conveyance directed to be made by the Appellants to Harcourt is declared subject to the Trust in Sir Richard's Will, and Harcourt's two Sons, so far as they were concerned, did consent to the Appellant's Enjoyment of the said Joynture Lands, — and by subsequent Proceedings the Appellants are confined to an insufficient Security for their Indemnity.

By the Will the Lady had Power to sell what part she pleased of the real Estate of 1600 l. per Ann. for payment of the Debts, and was to enjoy the Residue during her Life; yet by the Award, she is to be deprived of all the real Estate, save her own Joynture-Lands of 300 l. per Ann. And no Care is thereby taken to make her a Title thereto, or for vacating the Enrollment of Harcourt's pretended Settlement which tends to defeat her and the Creditor's also.

2. The Woods growing at Sir Richard's Death (worth above 2000 l.) and also the personal Estate which was of greater Value, besides the Lady's Jewels were devised intirely to her; yet by the Award she has nothing in Liew of the Woods, nor any Part of the personal Estate, save her Jewels, and 1350 l.

3. Harcourt had no Claim to the Estate, save by the Enrollment of his said pretended Settlement, the Validity whereof was never judicially tried (altho' of publick Concern) and yet under Colour and Pretence thereof, the Lady has been injured as aforesaid.

4. The Award and Answer so unduely and unfairly imposed upon the Lady as aforesaid, ought not to conclude the Appellants who do not seek to alter the Answer, as to any Confession or Denial therein, but only in that Clause whereby she was made to say that she was willing to submit to, and perform the Award, when 'tis plain she knew not what the Award contained.

And there are many Presidents in Chancery, for giving Liberty to amend Answers, where it appeared there had been a Surprise or ill Practice.

Wherefore the Appellants humbly pray, That the said Decrees and Proceedings may be reversed, and that they may have such Redress as shall be thought meet in relation to the said Answer and Award.

J. Pratt.

26 May, 1700.
Master Rolls

31 Oct. 1701.
Ld. Keep.

25 Apr. 1702.
Ld. Keep.

Note 1.